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June 28, 2013

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By ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

CALIFORNIA
DELAWARE
ILLINOIS
NEW JERSEY
NEW YORK
PENNSYLVANIA
WASHINGTON D.C.
WISCONSIN

RE: *Rates for Interstate Inmate Calling Services*
WC Docket No. 12-275

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the FCC's rules, this notice is respectfully submitted to report a meeting between undersigned counsel for Martha Wright, et al. (the "Petitioners") and the following members of the FCC staff on June 27, 2013: Kalpak Gude, David Zesiger, Lane Johnson, Anjali Vohra, Randy Clarke, Melissa Kinkel, Diane Griffin Holland, Richard Mallen, and Marcus Maher.

During the meeting, undersigned counsel presented his views that:

1. the FCC has clear statutory authority under Sections 201, 205 and 276 of the Communications Act, as amended, to adopt the proposed benchmark rates for interstate and intrastate ICS calls.
2. the recent call for additional data (DA 13-1445)¹ by the FCC is necessary only because the parties with the information, i.e., the ICS providers, have steadfastly refused to respond to numerous FCC requests to provide this information;
3. In light of the ICS Providers' failure to provide the detailed cost data and associated information specifically requested by the FCC,² these parties may no longer - both reasonably and legally - object to the FCC's adoption of the Petitioners' proposal based on the information submitted into the record;
4. there is well-established FCC precedent in the context of both adjudicatory and rulemaking proceedings for the FCC to use the "best currently available,

¹ *More Data Sought on Extra Fees Levied on Inmate Calling Services*, Public Notice, DA 13-1445 (rel. June 26, 2013).

² *See Appendix A* (attached hereto) (excerpt from Petitioners' Reply Comments, filed April 22, 2013, pg. 8).

verifiable and reasonable” information to make its decision in the instant proceeding.³

5. the Petitioners and other parties supporting reform have submitted more than sufficient data and related information for the FCC to justify the adoption of a benchmark rate of \$0.07 per minute, with no other charges or ancillary fees; and
6. in particular, the recent report, *Please Deposit All Of Your Money: Kickbacks, Rates, and Hidden Fees In the Jail Phone Industry*, by the [Prison Policy Initiative](#), provided a wealth of valuable information, including specific information on Ancillary Fees that was the subject of DA 13-1445.⁴

In sum, undersigned counsel urged the FCC staff to take expedited action to resolve this long-pending proceeding, and provide relief to the millions of citizens who have waited more than 12+ years for FCC action.

Should there be any questions regarding this submission, please contact undersigned counsel.

Respectfully submitted,



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³ See *Petitioners' Reply Comments*, pg. 12 (citing *Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, Second Report and Order, 12 FCC Red 18,730, 18,892 (1997)).

⁴ See *Exhibit 48* (<http://apps.fcc.gov/ecfs/document/view?id=702231114>) (a copy of which was provided to the staff, and attached hereto as Appendix B).

* Admitted in Maryland only. District of Columbia Bar Application pending; practice supervised by partners of the firm who are active D.C. Bar members pursuant to D.C. Bar Rule 49(c)(8).

Attachments

cc: Kalpak Gude (via email)
Randolph Clarke (via email)
David Zesiger (via email)
Lane Johnson (via email)
Anjali Vohra (via email)
Melissa Kinkel (via email)
Diane Griffin Holland (via email)
Richard Mallen (via email)
Marcus Maher (via email)
Rebekah Goodheart (via email)

APPENDIX A

come from the ICS providers,²⁴ and repeatedly called for the submission of detailed, specific evidence from all parties.

For example, the FCC requested specific data and evidence on the following matters, most of which could only come from the ICS providers:

- what costs are associated with the per-call charge; ¶18
- what are costs associated with call security; ¶19
- support of or disproving per-minute rate caps are arbitrary and capricious; ¶21
- provide alternate methodologies supported by sufficiently-detailed data; ¶25
- what are current ratios of debit to collect calling in correctional facilities; ¶32
- updated data on how much these site commissions are and how much they add to the per-call costs; ¶37
- provide data on the average number of calls that are blocked per month and the reason for the blocking; ¶40
- updated data from all interested parties and the public, but especially from ICS providers; ¶43 (emphasis added)
- most up-to-date information available regarding interstate ICS rates to aid us in developing a clearer understanding of the ICS market. This includes per-call and per-minute rates, information on commissions and what percentage of a rate they comprise, the number of disconnected calls, the average length of calls, and how calls break out by type, i.e. collect, prepaid and debit; ¶43
- The ICS Provider Proposal also provides no information about the geographic distribution of facilities in the sample, the distribution between state prisons and local prisons (jails), and the distribution between public and privately administrated facilities. Information about these facilities characteristics would be relevant to analyzing whether the sample is representative; ¶44, nt. 148 and
- specific analysis and facts to support any claims of significant costs or benefits associated with the proposals herein. ¶48

Despite the clarity with which the FCC made these requests, almost all of the ICS providers elected not to provide specific data and evidence, and clearly articulated their lack of interest in responding to the FCC's direct call to do so.²⁵

²⁴ *NPRM*, 27 FCC Rcd at 16,645.

APPENDIX B

EXHIBIT 48

Memo - Phone Fees and Justifications

PRISON
POLICY INITIATIVE

PRISON

POLICY INITIATIVE

To: Peter Wagner, Executive Director
From: Aleks Kajstura, Legal Director
Date: April 19, 2013
Re: Prison Phone company justifications for the fees charges

Question presented

What justifications are offered by the prison phone companies for the various fees charged?

Answer

I reviewed the tariffs of the companies and in some cases their websites to find any available explanation for the various fees charged. Each table row below contains the actual and complete quote of that company's explanation:

Company	Fee	Justification	Source
AmTel	LEC Billing Cost Recovery Fee	Partial offset of expenses with billing calls through local exchange carriers.	Exhibit 34, Original Page 33
	Direct Billing Cost Recovery Fee	Partial offset of expenses with billing calls through local exchange carriers.	Exhibit 34, Original Page 33
	Printed Statement Fee	<i>No justification provided</i>	Exhibit 34, Original Page 32

Company	Fee	Justification	Source
Global Tel* Link	Federal Regularity Cost Recovery Fee	To partially recover expenses incurred with regard to interstate and international regulatory costs and taxes. This includes, but is not limited to, such items as expenses associated with billing, collecting and remitting federal USF, the national fund for TRS, local number portability, federal regulatory fees, expenses for federal regulatory proceedings and compliance, portions of local and state property taxes associated with interstate and international calling and other non-income-tax related tax costs associated with interstate and international calling.	Exhibit 35, 3 rd Revised Page 18.1
	Public Telephone Surcharge	In order to recover the Company's expenses to comply with the FCC's pay telephone compensation plan effective on October 7, 1997 (FCC 97-371), an undiscountable per call charge is applicable to all interstate, intrastate and international calls that originate from any domestic pay telephone used to access the Company's services. This surcharge, which is in addition to standard RTCed usage charges and any applicable service charges and surcharges associated with the Company's service, applies for the use of the instrument used to access the Company's service and is unrelated to the service accessed from the pay telephone.	Exhibit 35, Original Page 10
	Single Bill Fee	This fee will be charged only once per billing period regardless of the number of calls accepted.	Exhibit 35, 3 rd Revised Page 18
	Validation Surcharge	The Validation Surcharge is applied to recover revenue lost due to the difficulty of rating calls and the cost of verifying the geographic location of the called party for security purposes pursuant to Correctional Institution contracts.	Exhibit 35, 3 rd Revised Page 18.1

Company	Fee	Justification	Source
ICSolutions	Bill Statement Fee	In order to partially offset increased expenses associated with billing calls via local exchange carriers, a bill statement fee may apply each billing period in which local or long distance collect calls are billed through a Customer's local exchange carrier.	Exhibit 36, Original Page 21.1
	Federal Cost Recovery Surcharge	To partially recover expenses incurred with regard to interstate and international regulatory costs and taxes. This includes, but is not limited to, such items as expenses associated with billing, collecting and remitting federal USF, the national fund for TRS, national number portability, federal regulatory fees, expenses for federal regulatory proceedings and compliance, portions of local and state property taxes associated with interstate and international calling and other non-income-tax related tax costs associated with interstate and international calling.	Exhibit 36, 4 th Revised Page 13

Company	Fee	Justification	Source
Infinity Networks	Public Telephone Surcharge	In order to recover the Company's expenses to comply with the FCC's pay telephone compensation plan effective on October 7, 1997 (FCC 97-371), an undiscountable per call charge is applicable to all interstate, intrastate and international calls that originate from any domestic pay telephone used to access the Company's services. This surcharge, which is in addition to standard tariffed usage charges and any applicable service charges and surcharges associated with the Company's service, applies for the use of the instrument used to access the Company's service and is unrelated to the service accessed from the pay telephone.	Exhibit 37, Original Page 12
	Single Bill Statement Fee	This fee is for the purpose of offsetting Company's billing and regulatory expenses associated with the services offered.	Exhibit 37, 1 st Revised Page 32
	Regulatory Assessment Fee	This fee is assessed to recover expenses the Company incurs with regard to state compliance requirements. This fee is not a tax or charge imposed or required by any government entity.	Exhibit 37, 1 st Revised Page 32
	Wireless Administration Fee	No justification provided	Exhibit 38

Company	Fee	Justification	Source
Lattice	Bill Statement Fee	In order to partially offset increased expenses associated with billing calls via local exchange carriers, a billing cost recovery fee will apply each billing period in which local or long distance collect calls are billed through a Customer's local exchange carrier or directly by the Company.	Exhibit 39, 1 st Revised Page 18
	Federal Cost Recovery Surcharge	To partially recover expenses incurred with regard to interstate and international regulatory costs and taxes. This includes, but is not limited to, such items as expenses associated with billing, collecting and remitting federal USF, the national fund for TRS, national number portability, federal regulatory fees, expenses for federal regulatory proceedings and compliance, portions of local and state property taxes associated with interstate and international calling and other non-income-tax related tax costs associated with interstate and international calling.	Exhibit 39, 1 st Revised Page 18

Company	Fee	Justification	Source
Legacy	Bill Statement Fee	This fee will be assessed when the Company bills for its services on the Customer's local telephone bill.	Exhibit 40, Original Page 43
	Carrier Cost Recovery Fee	To recover certain costs associated with providing intrastate local exchange service including expenses for national regulatory fees and programs, and connection and account servicing charges. This fee is not a tax or charge required by the government.	Exhibit 40, 1 st Revised Page 44, Original Page 17 - 1 st Revised Page 42.2
	Network infrastructure Fee	To recover various costs of network development and maintenance, regulatory oversight proceedings and compliance, fraud monitoring, account provisioning and maintenance and other costs incurred by the company in the provision of interstate telecommunications services. This fee is not a government mandated tax or surcharge.	Exhibit 40, 1 st Revised Page 44
	Non Subscriber Fee	No justification provided	Exhibit 40, Original Page 43, Original Page 17 - 1 st Revised Page 42.2
	Payphone Surcharge	In order to recover the Company's expenses to comply with the FCC's pay telephone compensation plan effective on October 7, 1997 (FCC 97-371), a per call charge may apply to interstate, intrastate and international calls that originate from any domestic pay telephone used to access the Company's services. This surcharge, which is in addition to standard usage charges and any applicable service charges and surcharges associated with the Company's service, applies for the use of the instrument used to access the Company's service and is unrelated to the service accessed from the pay telephone.	Exhibit 40, Original Page 11
	Premise Impose Fee	No justification provided	Exhibit 40, Original Page 21
	Prepaid Wireless Fee	No justification provided	Exhibit 40, 1 st Revised Page 44
	Regulatory Compliance Fee	This fee is utilized to recover expenses the company incurs with regard to state compliance activities. This fee is not a tax or charge imposed or required by any government entity.	Exhibit 40, Original Page 43

Company	Fee	Justification	Source
NCIC	Account Maintenance Fee	A prepaid collect account is deactivated when no customer initiated activity occurs within 30 days following the last customer-initiated transaction. After 30 days of inactivity, a monthly Account Maintenance Fee may be applied to the prepaid collect account. The monthly fee is \$10.00 or the remainder of the balance in the account, whichever is smaller.	Exhibit 8, 2 nd Revised Page 55
	Billing Cost Recovery Fee	In order to partially offset increased expenses associated with billing calls via local exchange carriers, a billing cost recovery fee may apply each billing period in which local or long distance collect calls are billed through a Customer's local exchange carrier.	Exhibit 8, 2 nd Revised Page 55
	Regulatory Cost Recovery Fee	In order to partially recover expenses incurred with regard to interstate regulatory costs and taxes, such as expenses associated with billing, collecting and remitting federal USF; national TRS and LNP funds, national number portability, federal regulatory fees, expenses for federal regulatory proceedings and compliance, and interstate and international allocations of property and other taxes.	Exhibit 8, 2 nd Revised Page 55
	Federal USF Cost Recovery Fee	To recover expenses associated with billing, collecting and remitting federal USF.	Exhibit 8, 2 nd Original Page 10.1
	Regulatory Assessment Fee	For costs associated with regulatory proceedings and filings, compliance with regulatory orders and mandates, and administration of federally mandated taxes and surcharges.	Exhibit 41

Company	Fee	Justification	Source
Pay Tel	Bill Processing Fee	To recover costs associated with the Company's administration, billing, collection and remittance of various government-mandated fees, surcharges and other amounts associated with the provision of services by the Company. No fee will be assessed in any month when there are no collect or prepaid collect calls billed.	Exhibit 42, Original Page 37

Company	Fee	Justification	Source
Securus	Bill Processing Charge	The bill processing charge is a monthly fee to recover some of the Company's billing expenses associated with calls from Confinement Facilities served by the Company.	Exhibit 43, page 2
	Billing Statement Fee	In order to partially offset increased expenses associated with billing calls through local telephone companies, a billing fee may apply each billing period in which local or long distance collect calls are billed to a consumer's local telephone company.	Exhibit 43, page 2
	Federal Regulatory Recovery Fee	No justification provided	Exhibit 43, page 3
	USF Administrative Fee	The Federal Regulatory Recovery Fee helps recover costs associated with the provision of state-to-state and international long distance services including the administration of the federal universal service fund (USF), other federal regulatory fees, proceedings and compliance items.	Exhibit 43, page 3
	Wireless Administration Fee	No justification provided	

Company	Fee	Justification	Source
Telmate	Bill Statement Fee	No justification provided	Exhibit 44, Original Sheet 18
	Carrier Cost Recovery Fee	No justification provided	Exhibit 44, Original Sheet 18
	Regulatory Assessment Fee	No justification provided	Exhibit 44, Original Sheet 18